REMARKS:

Claims 1-28 are currently pending in the application.

Claims 1, 3-11, 13-20, and 22-28 stand rejected under 35 U.S.C. § 103(a) over U.S. Patent No. 6,460,038 to Khan *et al.* ("*Khan*").

Claims 2, 12, and 21 stand rejected under 35 U.S.C. § 103(a) over *Khan* in view of U.S. Patent No. 5,931,900 to Notani *et al.* ("*Notani*").

The Applicants respectfully submit that all of the Applicants arguments are without *prejudice* or *disclaimer*. In addition, the Applicants have merely discussed example distinctions from the cited prior art. Other distinctions may exist, and as such, the Applicants reserve the right to discuss these additional distinctions in a future Response or on Appeal, if appropriate. The Applicants further respectfully submit that by not responding to additional statements made by the Examiner, the Applicants do not acquiesce to the Examiner's additional statements. The example distinctions discussed by the Applicants are considered sufficient to overcome the Examiner's rejections.

REJECTION UNDER 35 U.S.C. § 103(a):

Claims 1, 3-11, 13-20, and 22-28 stand rejected under 35 U.S.C. § 103(a) over *Khan* in view of the Examiner's Official Notice.

Claims 2, 12, and 21 stand rejected under 35 U.S.C. § 103(a) over *Khan* in view of *Notani*.

The Applicants respectfully submit that *Khan*, *Notani*, or the Examiner's Official Notice, either individually or in combination, fail to disclose, teach, or suggest each and every element of Claims 1-28. Thus, the Applicants respectfully traverse the Examiners obviousness rejection of Claims 1-28 under 35 U.S.C. § 103(a) over the proposed combination of *Khan*, *Notani*, or the Examiner's Official Notice, either individually or in combination.

The Proposed *Khan*-Official-Notice Combination Fails to Disclose, Teach, *or* Suggest Various Limitations Recited in Applicants Claims

For example, with respect to independent claim 1, this claim recites:

An electronic commerce system for facilitating an electronic commerce transaction, the electronic commerce system comprising:

a global content directory for providing a plurality of buyers access to a distributed plurality of seller databases, each seller database associated with a corresponding seller and different from other seller databases in the distributed plurality of seller databases, the global content directory comprising:

a directory structure comprising a plurality of product classes organized in a hierarchy, each product class categorizing a plurality of products and defining one or more attributes of the products categorized in the product class;

one or more pointers associated with each product class in the plurality of product classes, each pointer identifying the seller database in the distributed plurality of seller databases in which product data enabling a product transaction is stored for products associated with the product class, the seller database identified by the pointer being associated with its corresponding seller and being distinct from the other seller databases in the distributed plurality of seller databases; and

a search interface operable to communicate a search query for product data to the one or more seller databases identified by the one or more pointers associated with the selected product class, each seller database associated with its corresponding seller and distinct from the other seller databases in the plurality of seller databases;

a selection of a product class received from one of the plurality of buyers;

in response to the selection of the product class received from one of the plurality of buyers, communicating a search query for product data to one or more seller databases identified by one or more pointers associated with the selected product class; and

in response to communicating a search query for product data to one or more seller databases identified by one or more pointers associated with the selected product class, receive address information associated with a seller database associated with a seller of the selected product, the seller database including product data for the selected product, the address information enabling one of the plurality of buyers to communicate with the seller associated with the seller database to conduct a commerce transaction relating to the selected product. (Emphasis added)

Khan or the Examiner's Official Notice, either individually or in combination, also fail to disclose each and every limitation of independent Claims 11, and 20.

The Applicants respectfully submit that in the 13 December 2007 Final Office Action, the Examiner makes many equations between the prior art and the present application, of which the Applicants respectfully disagree. The Examiner's arguments will be addressed in the order in which they are presented in the 13 December 2007 Final Office Action.

The Examiner acknowledges, and the Applicants agree, that "***Khan does not use the term global content directory***". The plain fact is that *Khan* in no way discloses, teaches or suggests a "***global content directory***," **by any name one chooses to call it**. In particular, the absence from Khan of a "***global content directory***" clearly demonstrates the plain fact that *Khan* fails to disclose, teach or suggest every element of the Applicants claims. The Examiner has apparently implied that the "***global content directory***" disclosed in the Applicants specification is merely a term or a label and is not "functionally related to the substrate of the article of manufacture." (13 December 2007 Final Office Action, Page 6.) Nevertheless, the Applicants respectfully submit that the "***global content directory***" as claimed in the Applicants claims or disclosed and defined in the Applicants specification, is nowhere disclosed, taught or suggested in *Khan*.

For example, a "***global content directory***" is defined in the Applicants specification, at least as, a "universal directory of the contents of multiple seller databases 32 (and potentially all seller databases 32)." (Specification, Page 9, Lines 1-3). The acknowledged fact that *Khan* fails to disclose a "***global content directory***" is not a mere matter of nomenclature or labeling, as the Examiner asserts, but rather is strong evidence that *Khan* simply cannot and does not disclose among other things, the "***global content directory***" recited in the Applicants Claims, and as clearly described in the Applicants Specification.

Notwithstanding the Examiner's clear acknowledgment that "*Khan* does not use the term ***global content directory***" the Examiner asserts that *Khan* somehow discloses

a "[global, see below] directory for providing a plurality of buyers (see, for example, references to users *(pl.)* as in Fig. 5, items 512, 514; users *(pl.)* that buy, such as in Fig. 10, are *buyers*.)" (13 December 2007 Final Office Action, Page 2.) Nevertheless, the cited portions of *Khan*, and in fact *Khan* in its entirety, fails to disclose a "*global content directory*", as recited in the Applicants claims. In particular, the cited portions of *Khan*, Fig. 5, items 512, 514 relate to "checking memory to determine **which users have selected to receive updates** from the particular linked website" (Item 512) and "transmitting the updates to the particular users who have selected that particular interval." (Item 514) The cited portions illustrate precisely why the teachings of *Khan,* do not disclose various elements of the Applicants claims. Specifically, Fig. 5 Item 512 in *Khan*, recited above, disclose "users have **selected** to receive updates." The cited portions of *Khan* clearly shows that in contrast to the Applicants system, a user in *Khan* is **required to affirmatively act** by "select[ing] to receive updates" in order to update their linked websites. The fact that *Khan* **requires a user to affirmatively act** in order to be updated, is in contrast with the automation of the "**global content directory**" of the Applicants system and clearly patentably distinguishes the Applicants system from that disclosed in *Khan*. Other clear distinctions likewise exist.

Another clear distinction between the cited portions of *Khan* (as well as *Khan* in its entirety) and the Applicants system is that *Khan,* as acknowledged by the Examiner, relates to a "***particular linked website***". Once again, *Khan* clearly discloses that a user is first required to **manually** link to a "***particular linked website***", (See FIG. 3, Step 302 "creating a bookmark for forming a link to a web site to access the linked website upon selection of the bookmark"). Therefore, in clear contrast to *Khan*, which **clearly requires a user to manually create a bookmark in order to manually create a link**, the "**global content directory**", as recited in the Applicants claims relates, at least to, providing "a **directory** of products using a directory structure." Which, among other things, clearly demonstrates the patentable distinction between *Khan* and the Applicants claims. In addition, substantiates a clear fact that in *Khan,* a bookmark (which **must be manually selected by a user**) is updated **only** if first "**selected to receive updates**". Therefore, *Khan* merely discloses bookmarks that **must be manually created** and that

must be further selected to receive updates, which clearly fails to teach, suggest, or even hint at the "***global content directory***" recited Applicants claims.

In addition to the foregoing, other patentable distinctions between the cited portions (and the entirety) of *Khan,* and the Applicants claims, clearly exist. For example, the Examiner asserts that FIG. 5, Item 514 of *Khan* somehow discloses a "***global content directory***" as disclosed by the Applicants. (13 December 2007 Final Office Action, Page 2.) Once again, this is simply not the case. In particular, FIG. 5, Item 514 discloses ***transmitting the updates to the particular users who have selected that particular interval***. (Column 12, Lines 3-5). As set forth at length above, the cited portions of *Khan*, and *Khan* in its entirety, relates to ***manually selected*** bookmarks that may be updated in response to a ***manual request*** to receive such updates (FIG. 5, Step 512). In contrast, the Applicants claims relate, at least to, a "***global content directory***" that is nowhere disclosed in *Khan,* no matter by what name one chooses to call the "***global content directory***." The Applicants respectfully submit that further additional patentable distinctions exist between the subject application and the rather unrelated teachings of *Khan.*

Therefore, in light of the foregoing, the Applicants respectfully submit that the Examiner withdraw the rejection of Claims 1, 3-11, 13-20, and 22-28 under *Khan.* It is clear in the subject application that, no matter by what label what one chooses to call the respective terms in *Khan* and the present application, there is simply no equivalence between a user being updated with information from websites that he has previously manually selected to be bookmarked, as in *Khan*, and a "***global content directory***" automatically providing access to seller databases, as recited in the Applicants claims.

Once again, it must be pointed out that ***any link to any website in Khan must be created manually by a user***, and is not provided within the context of any "***global content directory***". Significantly, *Khan* fails to disclose, teach, or suggest a "***global content directory***", since *Khan* in its entirety provides only the ability to ***manually request*** updates for bookmarks to websites that were, in the first instance, created ***manually***. Accordingly, while *Khan* allows users to select products or receive product

updates from *only* those websites that have previously been *selected and bookmarked* (a manual content directory, if you will) - a tedious task indeed - the present application allows users to conveniently select products from a "*global* content directory," or "universal directory" that is provided.

The Applicants respectfully submit that *the Examiner has mischaracterized the Applicants claimed limitation regarding* "in response to the selection of the product class received from one of the plurality of buyers" and *further mischaracterized the equation involving* "*buyer queries*" *in Khan*. In particular, the limitation here at issue relates to "communicating a *search query* for product data *to one or more seller databases*" *in response* to a "selection of a product class received from one of a plurality of buyers". However, the examples relied upon by the Examiner relate to "*querying the user*." (See Fig. 4, item 402; Fig. 5, item 502; Fig. 6, item 602).

Therefore, while *Khan* and the subject application may both involve a query, which the Applicants do not admit, the query in *Khan,* as acknowledged by the Examiner, is directed *to the user* (i.e., "*querying the user*"). In contrast, the "query" recited in independent Claim 1 is directed "*to one or more seller databases*". Accordingly, there is simply no equivalence between the query in *Khan*, *which is directed to a user* (i.e., "*querying the user*"), and the query in independent Claim 1, which is at least *directed to* "*one or more seller databases*". Ultimately, because the queries in the present application are directed to different entities than the entities in *Khan*, the "search query" limitation of the subject application is simply not found in *Khan*. Therefore, it is clear that the limitation "*communicating a search query for product data to one or more seller databases*" is *nowhere* taught, suggested, or even hinted at in *Khan*.

The Applicants further respectfully point out that the Examiner has attempted to create equivalency where none exists with regard to the manner in which access is provided to a "distributed plurality of seller databases (see, for Example, at least Fig. 10, plurality of sellers, such as LLBEAN, GAP, DELTA AIRLINES). (*See* 13 December 2007 Final Office Action, Page 2).

Specifically, the Examiner asserts that "***access***" in *Khan* is provided in the following manner: "access (***via links***) to a distributed plurality of seller databases". The Examiner therefore clearly acknowledges that access in *Khan* is provided "***via links***". As described in *Khan*, and as noted by the Examiner, the "***links***" in *Khan* relate to "creating a bookmark for forming a ***link*** to a web site." (Fig. 3, Step 302). Accordingly, a ***link*** in *Khan* may only be formed through a ***manual selection by a user***, and ***in Khan access occurs only to those sites for which a user has previously selected bookmarks***. In contrast, independent Claim 1 involves a "***global content directory for providing a plurality of buyers access***". Therefore, it is the "***global content directory***" (and not the "***links***") of the Applicants claims that provides "***access***". Put another way, "***access to a distributed plurality of seller databases***" recited in independent Claim 1 is "***provid[ed]***" at least via a "***global content directory,***" whereas access to a distributed plurality of seller databases in *Khan* occurs, as acknowledged by the Examiner, "***via links***". Accordingly, as can be seen from the foregoing, the *ways* in which access is provided in *Khan* as compared to the present application are completely different, demonstrating that *Khan* fails to disclose each and every limitation of the present application.

In addition to the foregoing, the Examiner asserts that independent Claim 1 limitations regarding "each pointer identifying the seller databases in the distributed plurality of seller databases", is somehow disclosed in *Khan*. To support this reasoning, the Examiner relies upon Fig. 10, item 1008. (13 December 2007 Final Office Action, Page 3). The Applicants respectfully submit that Fig. 10, item 1008 fails to disclose, teach, or suggest the limitation of "each pointer identifying the seller database". For example, the Applicants claim limitation regarding "each pointer identifying the seller databases" provides that ***each and every*** pointer identifies a seller database. Nonetheless, this limitation is clearly absent from Fig. 10, item 1008, and the entirety of, *Khan*. Accordingly, in *Khan*, each and every pointer ***does not*** identify a seller database. Rather, in *Khan*, Fig. 10, item 1008, pointers ***may*** point not only to seller databases, but ***are not required to do so***, since pointers in *Khan* may also point to general informational databases, such as Lonely Planet's "July Newsletter." ***Clearly, Lonely Planet's "July Newsletter" is not a "seller database"***. Therefore, because

independent Claim 1 provides that "***each pointer***" ***must necessarily*** identify a seller database, whereas *Khan* ***only allows that some pointers may*** identify a seller database, each and every limitation of independent Claim 1 is clearly not found in *Khan*.

The Applicants further respectfully submit that the Examiner erroneously concludes, referring to *Khan*, that "e.g. travel class includes different sellers associated with the travel class." (13 December 2007 Final Office Action, Page 4). Nevertheless, assuming, *arguendo*, that in the present application the *travel class* "includes different sellers associated with the travel class," due to the "***global content directory***" feature discussed above, ***the same is not true in Khan***. Specifically, ***in Khan, as noted above, a product class may only include those websites for which a user has previously created bookmarks***. Accordingly, in *Khan*, a given product class may have ***only one seller*** associated with the product class, or it may have ***multiple sellers*** associated, or it may have ***zero sellers*** associated, depending upon the number of websites that a user has previously bookmarked for any given product class. Therefore, a product class in *Khan* does not necessarily "***include[s] different sellers***" since, ***if a user has not manually selected a bookmark for a given product class in Khan, then there may be*** n***o sellers associated with a given product class***.

The Applicants still further respectfully submit that *Khan* fails to disclose, teach, or suggest independent Claim 1 limitation "***in response to communicating a search query for product data to one or more seller databases identified by one or more pointers associated with the selected product class, receive address information associated with a seller database associated with a seller of the selected product, the seller database including product data for the selected product, the address information enabling one of the plurality of buyers to communicate with the seller associated with the seller database to conduct a commerce transaction relating to the selected product***." The Office Action merely points to column 10, lines 27 through column 11, line 28 of *Khan* as teaching the limitation of "***communicate address information associated with a seller database associated with a seller of the selected product, the seller database including product data for the selected product, the address information enabling one of the plurality of buyers to communicate with the seller associated***

with the seller database to conduct a commerce transaction relating to the selected product." Nevertheless, as noted above, this passage of *Khan* fails to disclose, teach, or suggest this limitation.

For example, *Khan*, simply involves a user visiting a website, creating a bookmark and programming the bookmark to perform certain functions in the future based on user specified criteria. In addition to the above-noted shortcomings, *Khan simply fails to teach or suggest a search interface for a global content directory wherein the user selects a product from the global content directory, the selection being sent from the search interface to the seller database as part of a search query*. Instead, *Khan* merely teaches manually programming a bookmark to generate information or notices at pre-programmed times. *Khan* fails to teach or suggest generating this information or notice in response to the user selecting the product from the "*global content directory*".

In addition, *Khan,* merely teaches programmable bookmarks. A user may *manually* visit a webpage and *manually* create a bookmark, wherein the bookmark is *manually* programmable. The bookmark may be *manually* programmed to have an alarm. The user may *manually* choose a time in the future or a time interval at which the user wishes to revisit the website. At the appointed time, the user is notified or reminded to revisit the website. Additionally, the bookmark can be *manually* programmed to publish content updates to the user. In such a case, the user is notified periodically of updates to the website. Other programmable features of the bookmark are detailed in other portions of *Khan*. Nevertheless, all these passages of *Khan*, *and Khan* in its entirety, fail to disclose, teach, or suggest independent Claim 1 limitation regarding "*in response to communicating a search query for product data to one or more seller databases identified by one or more pointers associated with the selected product class, receive address information associated with a seller database associated with a seller of the selected product, the seller database including product data for the selected product, the address information enabling one of the plurality of buyers to communicate with the seller associated with the seller database to conduct a commerce transaction relating to the selected product*."

The Applicants yet further respectfully submit that *Khan* does not disclose, teach, or suggest independent Claim 1 limitations regarding "***in response to the selection of the product class received from one of the plurality of buyers, communicating a search query for product data to one or more seller databases identified by one or more pointers associated with the selected product class***." Specifically, the Office Action points to elements 402, 502, and 602 of Figures 4, 5, and 6 of *Khan* as teaching "***in response to the selection of the product class received from one of the plurality of buyers***." (13 December 2007 Final Office Action, Page 3). However, elements 402, 502, and 602 of Figures 4, 5, and 6 of *Khan* fails to teach "***in response to the selection of the product class received from one of the plurality of buyers***", as recited in independent Claim 1. Instead, element 402 merely teaches that a user is asked a particular date and time to be reminded to visit a website linked to the selected bookmark. In addition, the user, in *Khan*, is not asked ***anything*** about a product and the user's response has nothing to do with a product or the user making a product selection from a global content directory. Rather, ***the user, in Khan, is merely reminded to visit a particular website in the future.***

In addition, element 502, in *Khan* merely discloses that a user is queried as to whether the user would like to be notified of updates to the website and a time interval for receiving updates for the website. Again, the query issued to the user, in *Khan*, ***has nothing do with any product***, but rather the query is merely provided for being notified of an update to the website. These updates, regardless of what the update contains, are sent to the user and are ***not tied to a product; rather they are tied to the website***. Thus, the updates, or generating the updates, are simply not equivalent to a user making a product selection from a "***global content directory***". Furthermore, element 602 in *Khan*, merely discloses a "pulled update" feature, wherein a user, in *Khan* is merely asked for keywords related to website. When a keyword is detected on the website, the user, in *Khan*, is notified that the word now appears on the webpage. Thus, ***the manual selection of updates*** or generating the updates are not equivalent to a user making a product selection from a "***global content directory***". Therefore, for at least the reasons set forth above, *Khan* does not teach, suggest, or even hint at "***in response to the selection of***

the product class received from one of the plurality of buyers," as recited in independent Claim 1.

Furthermore, looking at Figure 3 of *Khan*, elements 402, 502, and 602 are performed when a bookmark is created. The bookmark in *Khan*, as noted above, is merely a link to a website. However, the limitations of independent Claim 1 recite "*in response to the selection of the product class received from one of the plurality of buyers*." In contrast, as noted above, a website is not a product class. In addition, *creating a bookmark to a website, in Khan, is not the same as a user selecting a product class from the global content directory*.

Thus, even if any of elements 402, 502, or 602 could somehow be construed as buyer queries, which they are not, they are clearly not, elements 402, 502, or 602 do not teach, suggest, or even hint at a selection of product class as they are performed in response to the creation of a bookmark, or link, to a website. Thus, as elements 402, 502, or 602 are performed in response to the manual creation of a bookmark, or link, to a website, it follows that elements 402, 502, or 602 cannot be equivalent to the selection of a product class (from the "*global content directory*") from one of the plurality of users. Therefore, for at least the reasons set forth above, *Khan* does not teach, suggest, or even hint at "*in response to the selection of the product class received from one of the plurality of buyers*," as recited in independent Claim 1.

Furthermore, while the 13 December 2007 Final Office Action separates the feature of "*in response to the selection of the product class received from one of the plurality of buyers, communicating a search query for product data to one or more seller databases identified by one or more pointers associated with the selected product class*," into two parts in order to teach the limitation, none of the passages cited by the Office Action (nor *Khan* in its entirety) disclose, teach, or suggest *communicating a search query for product data in response to the selection of the of the product class* (form the global content directory) *by a buyer*. Rather, the Office Action seems to cite to passages that allegedly teach a buyer making a product query and a passage that allegedly shows results from a query (which queries are distinguishable from the "query" of

the subject application, as noted above). Applicants respectfully disagree with the Office Action and respectfully submit that none of the cited passages disclose, teach, or suggest a buyer making a query about product due to the *selection of the product from a global content directory* or displaying results of a communicated product query. However, even if the passages cited by the Office Action are assumed to teach a buyer generating a query and the results of a query being shown, *nowhere is it shown that a product query for product data is sent to a seller database in response to a selection of the that product by the buyer from the global content directory*. In fact, as noted above, there is simply no equivalence between the "query" in the cited portion of *Khan*, *which is directed to a user*, and the "query" in the Applicants claims, which is at least *directed to "one or more seller databases*".

Additionally, the Office Action States that Figure 10 teaches "*communicating a search query for product data to one or more seller databases identified by one or more pointers associated with the selected product class*," as Figure 10 allegedly teaches showing the results of a search query for product data, such as cargo pants and a special fare, and therefore a query must have been communicated. The Applicants respectfully disagree. Once again, Figure 10 neither teaches "*communicating a search query for product data to one or more seller databases identified by one or more pointers associated with the selected product class*," nor the results of a search query for product data. As shown in Figure 10, the cargo pants notification and special fares notification are displayed as part of the "service delivery feature". This feature is explained in greater detail in column 13, line 23 – column 14, line 7 and Figure 9. As taught by *Khan*, according to this service, a user is queried as to whether the user wants to receive sales and marketing information from the website. If so, *the user*, in *Khan*, is automatically notified of any and all such information. *Thus, the notification or result displayed in Figure 10 is due to the user signing up to receive marketing and sales updates for the entire website*. *Khan* does not teach, suggest, or even hint at an indication that the marketing and sales data is restricted to a specific selected product class, as recited in independent Claim 1. Thus, the information regarding cargo pants and special fares displayed in Figure 10 is not a search result for product data for a selected product class.

The Applicants further respectfully submit that *Khan* does not disclose, teach, or suggest independent Claim 1 limitations regarding a "***directory structure comprising a plurality of product classes organized in a hierarchy, each product class categorizing a plurality of products and defining one or more attributes of the products categorized in the product class***". Throughout the Office Action, directory headers such as "shopping," "travel," and "finance" are cited as being allegedly equivalent to the term "product class," as used in independent Claim 1. Figure 10 does show these terms (i.e. "shopping," "travel," and "finance") arranged in a directory in hierarchical order. However, ***merely arranging words in a directory in hierarchical order does not make them equivalent to the term product class***, as recited in independent Claim 1. Instead, independent Claim 1 provides "***each product class categorizing a plurality of products and defining one or more attributes of the products categorized in the product class***". ***Khan fails to disclose, teach, or suggest*** "each product class categorizing a plurality of products and defining one or more attributes of the products categorized in the product class", as recited in independent Claim 1.

As shown in Figure 10 of *Khan*, the category "Shopping" has list of bookmarks, which are links to a websites, for the websites LL Bean, Gap, and LandsEnd. The Applicants are unaware of how "shopping" is a product or product class and how "shopping" categorizes a plurality of products and defines one or more attributes of the products categorized in the product class. Furthermore, how is LL Bean, Gap, and LandsEnd a "product?" Also, on page 3, the Final Office Action of 13 December 2007 states that bookmarks are pointers. Thus, at best, the directory structure taught by *Khan* and illustrated in Figure 10 of *Khan* shows a set of pointers arranged in certain categories, ***but does not include or is not even related to a*** "***directory structure comprising a plurality of product classes organized in a hierarchy, each product class categorizing a plurality of products and defining one or more attributes of the products categorized in the product class***". Thus, for at least the reasons set forth above, the Applicants respectfully submit that the equations forming the foundation of the Examiner's comparison between *Khan* and independent Claim 1 cannot be made.

The Applicants further respectfully submit that these distinctions alone are sufficient to patentably distinguish independent Claim 1 from *Khan*.

The Applicants still further respectfully submit that the Examiner's Official Notice fails to cure the acknowledged deficiencies in *Khan*. The Examiner's Official Notice fails to disclose, teach, or suggest independent Claim 1 limitations regarding "*in response to the selection of the product class received from one of the plurality of buyers, communicating a search query for product data to one or more seller databases identified by one or more pointers associated with the selected product class,*" and "*a directory structure comprising a plurality of product classes organized in a hierarchy, each product class categorizing a plurality of products and defining one or more attributes of the products categorized in the product class*." Therefore, for at least the reasons set forth above, the Applicants respectfully submit that *Khan* or the Examiner's Official Notice, either individually or in combination, fails to disclose, teach, or suggest each and every limitation recited in independent Claim 1.

The Proposed *Khan*-Official-Notice Combination Fails to Disclose, Teach, or Suggest Various Limitations Recited in Applicants Claims

The Applicants respectfully maintain that *Khan* or the Examiner's purported Official Notice on Page 6 of the 13 December 2007 Final Office Action, either individually or in combination, fails to disclose, teach, or suggest each and every element of independent claims 1, 11, and 20. Thus, the Applicants respectfully maintain the traverse the Examiner's obviousness rejection of independent claims 1, 11, and 20 under 35 U.S.C. § 103(a) over the proposed combination of *Khan* and the Examiner's Official Notice, either individually or in combination.

The Applicants maintain that the Applicants are confused as to what the Examiner is intending to teach by the Official Notice or even the extent in which the Examiner is taking Official Notice. ***The Applicants respectfully request clarification as to the subject matter for which the Examiner is taking Official Notice***.

The Applicants respectfully traverse the Official Notice because the asserted facts, as best understood by the Applicants, are not supported by substantial documentary evidence or any type of documentary evidence and appear to be the Examiner's opinions formulated using the subject Application as a template, which constitutes impermissible use of hindsight. Furthermore, under these circumstances, it is inappropriate for the Examiner to take Official Notice without documentary evidence to support the Examiner's conclusion. (See MPEP § 2144.03). The Applicants respectfully request the Examiner to produce authority for the Examiner's purported Official Notice.

Only "in limited circumstances," is it "appropriate for an examiner to take official notice of facts not in the record or to rely on common knowledge in making a rejection". (MPEP § 2144.03). "Official notice unsupported by documentary evidence *should only be taken by the examiner* where the facts asserted to be well-known, or to be common knowledge in the art are *capable of instant and unquestionable demonstration as being well-known*. With respect to the subject Application, *the Examiner's statement* that "different sellers sell different products and services", *is not capable of instant and unquestionable demonstration as being well-known or even related to the subject Application*. (14 September 2006 Office Action, Page 11). As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be '*capable of such instant and unquestionable demonstration as to defy the dispute*' (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 U.S.P.Q. 6 (C.C.P.A. 1961))." (MPEP § 2144.03(A)). (Emphasis Added).

"*It is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based*. *Zurko*, 258 F.3d at 1385, 59 USPQ2d at 1697. (Emphasis Added). As the court held in *Zurko*, an assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support. *Id.* at 1385, 59 USPQ2d at 1697. See also *In re Lee*, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002)." (MPEP § 2144.03(A)). "Ordinarily, there must be some form of evidence in the record to support an assertion of common knowledge. See *Lee*, 277 F.3d

at 1344-45, 61 USPQ2d at 1434-35 (Fed. Cir. 2002); *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697 (holding that ***general conclusions concerning what is "basic knowledge" or "common sense" to one of ordinary skill in the art without specific factual findings and some concrete evidence in the record to support these findings will not support an obviousness rejection***). The examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge. See *Soli*, 317 F.2d at 946, 37 USPQ at 801; *Chevenard*, 139 F.2d at 713, 60 USPQ at 241. The applicant should be presented with the explicit basis on which the examiner regards the matter as subject to official notice and be allowed to challenge the assertion in the next reply after the Office action in which the common knowledge statement was made." (MPEP § 2144.03(B)). (Emphasis Added).

With respect to the subject Application, the Examiner submits as documentary evidence for the allegation that different sellers sell different products and services and refers to Figure 4A of U.S. Patent No. 7,092,892 to Sobalvarro *et al.* ("*Sobalvarro*"). However, the Examiner's conclusory statement that "different sellers sell different products and services", ***does not adequately address the issue that this statement is considered to be common knowledge, well-known in the art, or even related to the subject Application***. The Applicants respectfully submit the following statement, to further explain why the Examiner's above noticed statement is not considered to be common knowledge or well-known in the art.

First, it is not clear what the Examiner means by "***different sellers sell different products***" (i.e. what "***different sellers***" is the Examiner referring to and to what extent does the Examiner purport "***selling different products***" applies to the subject Application). In fact, the limitations recited in independent claim 1 are directed to "***a global content directory for providing a plurality of buyers access to a distributed plurality of seller databases***" which are "associated with a corresponding seller and ***distinct from other seller databases in the distributed plurality of seller databases***". It is not clear how the Examiner's Official Notice that "***different sellers sell different products***" relates to the "***distributed plurality of seller databases***" or how it relates to "***providing a plurality of buyers access to a distributed plurality of seller databases***" or even how it

is "*distinct from other seller databases in the distributed plurality of seller databases*".

Second, it is not clear how the Examiner's documentary evidence overcomes the presumption that "different sellers sell different products and services" is not considered to be common knowledge, well-known in the art. For example, in Figure 4A, *Sobalvarro* merely provides for an operator to view item descriptions for an inventory list, these items may be a product or a service. The operator in *Sobalvarro* may describe the items as having certain attributes. Therefore, according to *Sobalvarro*, an operator may view and describe an item which may be a product or service, but does not include, involve, or even relate to a "*global content directory for providing a plurality of buyers access to a distributed plurality of seller databases*, each seller database associated with a corresponding seller and *distinct from other seller databases in the distributed plurality of seller databases*", as recited in independent claim 1.

Third, as explained above, the Examiner's statement that "*different sellers sell different products*" is not considered to be common knowledge or well-known in the art or even related to the subject Application. The Applicants respectfully submit that the "*global content directory*" recited in independent claim 1 is for "*providing a plurality of buyers access to a distributed plurality of seller databases*" and each seller database is associated with a corresponding seller and each seller database is "*distinct from other seller databases in the distributed plurality of seller databases*". Thus, the Applicants further respectfully submit that the equations forming the foundation of the Examiner's comparison between the Examiner's Official Notice and independent claim 1 cannot be made.

Fourth, there is simply no disclosure, teaching, or suggestion in *Khan, Sobalvarro*, or the Examiner's Official Notice of a "*global content directory for providing a plurality of buyers access to a distributed plurality of seller databases*" which are "associated with a corresponding seller and *distinct from other seller databases in the distributed plurality of seller databases*".

The Applicants respectfully submit that the asserted fact "that **different sellers sell different products and services**", is not capable of "instant and unquestionable" demonstration as being well-known. The Applicants respectfully request the Examiner to produce **actual authority for the Examiner's statement** "that **different sellers sell different products and services**", is old and well known **and that this relates to the subject Application**.

The Applicants further submit that **the Applicants have adequately traversed the Examiner's assertion of Official Notice** and direct the Examiner's attention to the pertinent text of the MPEP, which states:

> If applicant adequately traverses the examiner's assertion of official notice, the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained. See 37 CFR 1.104(c)(2). See also *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697 ("[T]he Board [or examiner] must point to some concrete evidence in the record in support of these findings" to satisfy the substantial evidence test). If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. See 37 CFR 1.104(d)(2). (MPEP § 2144.03(C)).

Thus, if the Examiner continues to maintain the rejection of independent claims 1, 11, and 20 based on the Examiner's Official Notice, **the Applicants respectfully request that the Examiner provide documentary evidence as required** by MPEP § 2144.03(C). Furthermore, if the Examiner is relying on personal knowledge to support the finding of what is known in the art, **the Applicants further request that the Examiner provide an Affidavit or Declaration setting forth specific factual statements and explanation to support the finding** as further necessitated by MPEP § 2144.03(C).

The Proposed *Khan-Notani* Combination Fails to Disclose, Teach, or Suggest Various Limitations Recited in Applicants Dependent Claims 2, 12, and 21.

The Applicants respectfully submit that *Khan* or *Notani*, either individually or in combination, fail to disclose, teach, or suggest each and every element of dependent

Claims 2, 12, and 21. Thus, the Applicants respectfully traverse the Examiner's obviousness rejection of dependent Claims 2, 12, and 21 under 35 U.S.C. § 103(a) over the proposed combination of *Khan* and *Notani*, either individually or in combination.

Claims 2, 12, and 21 depend from independent Claims 1, 11, and 20, respectively. As argued at length above with respect to independent Claim 1, *Khan* fails to disclose, teach, or suggest all the limitations of independent Claims 1, 11 and 20. Accordingly, since *Khan* fails to disclose all of the limitations of independent claims 1, 11 and 20 and since claims 2, 12 and 21 depend from independent claims 1, 11 and 20, respectively, dependent claims 2, 12 and 21 are allowable for at least the reason of depending from an allowable claim. In addition to the clear shortcomings of *Khan* set out above, **Notani fails to cure the acknowledged deficiencies of Khan.** In particular, *Notani* fails to disclose, teach, or suggest the independent Claim 1 limitations including "in response to the selection of the product class received from one of the plurality of buyers, communicating a search query for product data to one or more seller databases identified by one or more pointers associated with the selected product class," and "a directory structure comprising a plurality of product classes organized in a hierarchy, each product class categorizing a plurality of products and defining one or more attributes of the products categorized in the product class". In addition, the Office Action fails to cite to any portion of *Notani* as teaching the limitations recited in independent Claim 1. Thus, dependent Claims 2, 12, and 21 are considered patentably distinguishable over the combination of *Khan* and *Notani.*

The Office Action Fails to Properly Establish a *Prima Facie* case of Obviousness over either the Proposed *Khan-Official Notice* Combination, nor the *Khan-Notani* Combination, According to the UPSTO Examination Guidelines

The Applicants respectfully submit that the Office Action fails to properly establish a *prima facie* case of obviousness for claims 1, 3-11, 13-20, and 22-28 based on the proposed combination of *Khan*-Official Notice, *either individually or in combination*, nor for claims 2, 12 and 21 proposed combination of *Khan and Notani,* either individually or in combination. In particular, the Office Action fails to establish a *prima facie* case of obviousness based on the "Examination Guidelines for Determining Obviousness Under

35 U.S.C. 103 in View of the Supreme Court Decision in *KSR International Co. v. Teleflex Inc*." (the "Guidelines").

As reiterated by the Supreme Court in *KSR International Co. v. Teleflex Inc.* (*KSR*), the framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in G*raham v. John Deere Co.* (383 U.S. 1, 148 USPQ 459 (1966)). Obviousness is a question of law based on underlying factual inquiries. These factual inquiries enunciated by the Court are as follows:

(1) Determining the scope and content of the prior art;
(2) Ascertaining the differences between the claimed invention and the prior art; and
(3) Resolving the level of ordinary skill in the pertinent art.

(Notice, 72 Fed. Reg. 57527 (Oct. 10, 2007)). Objective evidence relevant to the issue of obviousness must be evaluated by Office personnel. (383 U.S. 17–18, 148 USPQ 467 (1966)). As stated by the Supreme Court in *KSR*, "While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls." (*KSR,* 550 U.S. at __, 82 USPQ2d at 1391).

However, it is important to note that the Guidelines require that Office personnel "***ensure that the written record includes findings of fact*** concerning the state of the art and the teachings of the references applied. (Notice, 72 Fed. Reg. 57527 (Oct. 10, 2007)). In addition, the Guidelines remind Office personnel that the "***factual findings made by Office personnel are the necessary underpinnings to establish obviousness***." (*id*.). Further, "***Office personnel must provide an explanation to support an obviousness rejection*** under 35 U.S.C. 103. (*id*.). In fact, "35 U.S.C. 132 requires that the applicant be notified of the reasons for the rejection of the claim so that he or she can decide how best to proceed" and "clearly setting forth findings of fact and the rationale(s) to support a rejection in an Office action leads to the prompt resolution of issues pertinent to patentability." (*id*.).

With respect to the subject Application, the Office Action has not shown the ***factual findings necessary to establish obviousness*** or even ***an explanation to support the***

obviousness rejection of claims 1, 3-11, 13-20, and 22-28 based on the proposed combination of *Khan*-Official Notice, or the rejection of claims 2, 12 and 21 based on the proposed combination of *Khan* and *Notani,* either individually or in combination. With regard to claims 1, 3-11, 13-20, and 22-28, the Office Action merely states that "it would have been obvious to one skilled in the art at the time of the invention to include in Khan the use of SQL" (13 December 2007 Final Office Action, Page 7). Likewise, with regard to claims 2, 12 and 21 the Office Action merely states that "it would have been obvious to one skilled in the art at the time of the invention to combine *Khan* and *Notani* to disclose that the directory structure may comprise an LDAP directory." (13 December 2007 Final Office Action, Page 10). The Applicants respectfully disagree and respectfully submit that the Examiner's conclusory statements are not sufficient to establish the **factual findings necessary to establish obviousness** and is not a sufficient **explanation to support the obviousness rejection** of claims 1, 3-11, 13-20, and 22-28 based on the proposed combination of *Khan*-Official Notice, nor the rejection of claims 2, 12 and 21 based on proposed combination of *Khan* and *Notani,* either individually or in combination.

The Guidelines further provide guidance to Office personnel in "determining the scope and content of the prior art" such as, for example, "Office personnel must first obtain a thorough understanding of the invention disclosed and claimed in the application." (Notice, 72 Fed. Reg. 57527 (Oct. 10, 2007)). The scope of the claimed invention must be clearly determined by giving the claims the "broadest reasonable interpretation consistent with the specification." (*See* Phillips v. AWH Corp., 415 F.3d 1303, 1316, 75 USPQ2d 1321, 1329 (Fed. Cir. 2005) and MPEP § 2111.). In addition, the Guidelines state that any "**obviousness rejection should include**, either explicitly or implicitly in view of the prior art applied, **an indication of the level of ordinary skill**." (Notice, 72 Fed. Reg. 57528 (Oct. 10, 2007)). With respect to the subject Application, the Office Action has not provided **an indication of the level of ordinary skill**.

The Guidelines still further provide that once the *Graham* factual inquiries are resolved, Office personnel must determine whether the claimed invention would have been obvious to one of ordinary skill in the art. (*Id*.). For example, the Guidelines state that **Office personnel must explain why the difference(s) between the prior art and**

the claimed invention would have been obvious to one of ordinary skill in the art. (*Id.*). In addition, the Guidelines state that the proper analysis is *whether the claimed invention would have been obvious to one of ordinary skill in the art after consideration of all the facts*. (*Id.* and *See* 35 U.S.C. 103(a)).

With respect to the subject Application, the Office Action has not expressly resolved any of the *Graham* factual inquiries to determine whether the Applicants' invention would have been obvious to one of ordinary skill in the art. In addition, the Office Action fails to *explain why the difference(s) between the proposed combination of Khan*-Official Notice with regard to claims 1, 3-11, 13-20, and 22-28, the proposed combination of *Khan* and *Notani with regard to claims 2, 12 and 21 would have been obvious to one of ordinary skill in the art*. The Office Action merely states that ""it would have been obvious to one skilled in the art." (13 December 2007 Final Office Action, Pages 7 and 10). The Applicants respectfully disagree and further respectfully requests clarification as to how this statement *explains why the difference(s) between the proposed combination of Khan*-Official Notice with regard to claims 1, 3-11, 13-20, and 22-28, and the proposed combination of *Khan* and *Notani with regard to claims 2, 12 and 21*, *either individually or in combination, and the Applicants' claimed invention would have been obvious to one of ordinary skill in the art*. The Applicants further respectfully submit that the Examiner is using the subject Application as a template to formulate reconstructive hindsight, which constitutes impermissible use of hindsight under 35 U.S.C. § 103(a).

The Guidelines yet further state that the "key to supporting any rejection under 35 U.S.C. 103 is the *clear articulation of the reason(s) why the claimed invention would have been obvious*." (Notice, 72 Fed. Reg. 57528 (Oct. 10, 2007)). In fact, the Supreme Court in *KSR* noted that "*the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit*." (*id.*). The Court quoting *In re Kahn* (441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)), stated that "'[R]ejections on *obviousness cannot be sustained by mere conclusory statements*; instead, there *must be some articulated reasoning with some rational underpinning to support the legal*

conclusion of obviousness.'" (*KSR*, 550 U.S. at __, 82 USPQ2d at 1396). The Guidelines provide the following seven rationales:

(A) Combining prior art elements according to known methods to yield predictable results;

(B) Simple substitution of one known element for another to obtain predictable results;

(C) Use of known technique to improve similar devices (methods, or products) in the same way;

(D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;

(E) "Obvious to try"—choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success;

(F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art;

(G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.

The Applicants respectfully submits that the **Final Office Action fails to provide any articulation, let alone, clear articulation of the reasons why the Applicants' claimed invention would have been obvious**. For example, the **Examiner has not adequately supported the selection and combination of Khan-Official Notice with regard to the rejection of claims 1, 3-11, 13-20, and 22-28, nor the proposed combination of *Khan* and *Notani* with regard to the rejection of claims 2, 12 and 21.** The Examiner's unsupported conclusory statements that ""it would have been obvious to one of ordinary skill in the art" **does not adequately provide clear articulation of the reasons why the Applicants' claimed invention would have been obvious**. (13 December 2007 Final Office Action, Pages 7 and 10). In addition, the Examiner's unsupported conclusory statement fails to meet any of the Guidelines' rationales to render obvious the Applicants' claimed invention.

Thus, if the Examiner continues to maintain the obviousness rejection of claims 1, 3-11, 13-20, and 22-28 under the proposed *Khan*-Official Notice combination, and of *claims 2, 12 and 21 under* the proposed combination of *Khan* and *Notani*, the Applicants

respectfully request that the Examiner provide proper support for the obviousness rejection under 35 U.S.C. 103 as necessitated by the Guidelines.

The Applicants Claims are Patentable over the Proposed *Khan*-Official-Notice-*Notani* Combination

The Applicants respectfully submit that independent Claims 11 and 20 include limitations similar to those discussed above in connection with independent Claim 1. Thus, independent Claims 11 and 20 are considered patentably distinguishable over *Khan*, *Notani*, or the Examiner's Official Notice for at least the reasons discussed above in connection with independent Claim 1.

With respect to dependent Claims 2, 12 and 21, Claim 2 depends from independent Claim 1; Claim 12 depends from independent Claim 11; and Claim 21 depends from independent Claim 20. As mentioned above, each of independent Claims 1, 11, and 20 are considered patentably distinguishable over the proposed combination of *Khan*, *Notani*, and the Examiner's Official Notice. Thus, dependent Claims 2, 12, and 21 are considered to be in condition for allowance for at least the reason of depending from an allowable claim.

For at least the reasons set forth herein, the Applicants submit that Claims 1-28 are not rendered obvious by the proposed combination of *Khan*, *Notani*, or the Examiner's Official Notice. The Applicants further respectfully submit that Claims 1-28 are in condition for allowance. Thus, the Applicants respectfully request that the rejection of Claims 1-28 under 35 U.S.C. § 103(a) be reconsidered and that Claims 1-28 be allowed.

CONCLUSION:

In view of the foregoing remarks, this application is considered to be in condition for allowance, and early reconsideration and a Notice of Allowance are earnestly solicited.

A Request for Continued Examination (RCE) is being filed electronically herewith to facilitate the processing of this deposit account authorization. **The Director is hereby authorized to charge the $810.00 RCE fee to Deposit Account No. 500777.** Although the Applicants believe no additional fees are deemed to be necessary; the undersigned hereby authorizes the Director to charge any additional fees which may be required, or credit any overpayments, to **Deposit Account No. 500777.** If an extension of time is necessary for allowing this Response to be timely filed, this document is to be construed as also constituting a Petition for Extension of Time Under 37 C.F.R. § 1.136(a) to the extent necessary. Any fee required for such Petition for Extension of Time should be charged to **Deposit Account No. 500777.**

Please link this application to Customer No. 53184 so that its status may be checked via the PAIR System.

Respectfully submitted,

12 March 2008   /Steven J. Laureanti/signed
Date   Steven J. Laureanti, Registration No. 50,274

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